

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE MICROSOFT XBOX 360)
SCRATCHED DISC LITIGATION) Master Cause No. C07-1121-JCC
)
) **ORDER GRANTING IN PART AND**
) **DENYING IN PART PLAINTIFFS'**
) **MOTION TO FILE DOCUMENTS**
) **UNDER SEAL IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR CLASS**
) **CERTIFICATION AND FOR**
) **APPLICATION OF WASHINGTON**
) **LAW**

THIS DOCUMENT RELATES TO:
ALL ACTIONS

This matter comes before the Court on Plaintiffs' Motion to File Documents Under Seal in Support of Plaintiffs' Motion for Class Certification and for Application of Washington Law (Dkt. No. 57), Defendant's Response (Dkt. No. 79), and Plaintiffs' Reply (Dkt. No. 81). The Court has carefully considered these documents and their supporting declarations, as well as the balance of pertinent materials in the case file. The Court finds and rules as follows.

Pursuant to the newly revised Local Rules:

There is a strong presumption of public access to the court's files. With regard to dispositive motions, this presumption may be overcome only on a compelling showing that the public's right of access is outweighed by the interests of the public and the parties in protecting the court's files from public review. With

1 regard to nondispositive motions, this presumption may be overcome by a
2 showing of good cause under Rule 26(c).

3 Local Rules W.D. Wash. CR 5(g)(2). Only rarely will the court permit entire memoranda to be
4 filed under seal. Local Rules W.D. Wash. CR 5(g)(3). “If possible, a party should protect
5 sensitive information by redacting documents rather than seeking to file them under seal.” *Id.* In
6 addition, the motion must provide a specific description of documents or categories of
7 documents the party seeks to protect and a “clear statement of the facts justifying sealing and
8 overcoming the strong presumption in favor of public access.” Local Rules W.D. Wash. CR
9 5(g)(4). The facts supporting the motion must be provided by declaration or affidavit. *Id.*
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11 In this case, Plaintiffs request that the Court seal their memorandum filed in support of
12 their motion for class certification and application of Washington law, as well as the Sidman
13 Declaration and certain exhibits attached thereto and exhibits attached to the Williams-Derry
14 Declaration. (Mot. 2 (Dkt. No. 57).) Although Plaintiffs took no position as to the need for a seal,
15 Plaintiffs explained that Defendant designated them as containing confidential information. In
16 Response, Defendant explained that it did not object to the filing of the memorandum without a
17 seal. (Resp. 2 (Dkt. No. 79).) On December 11, 2008, therefore, Plaintiffs filed an unsealed
18 version of the memorandum. (Dkt. No. 82.) Additionally, Defendant suggested that Plaintiffs file
19 a redacted version of the Sidman Declaration sought to be sealed. Plaintiffs did so. (Dkt. No. 83.)
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21 The exhibits that remain under seal—and the portions of the Sidman Declaration that
22 have been redacted—contain Defendant Microsoft’s confidential business information regarding
23 the Xbox 360 optical disk drive’s technical specifications and other attributes. (Resp. 3 (Dkt. No.
24 79).) Based on Defendant’s Response and the Umeno Declaration (Dkt. No. 80), the Court is
25 persuaded that these materials contain proprietary information that would cause Defendant
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1 competitive harm if disclosed. Such concerns overcome the strong presumption of public access
2 to court records. Accordingly, the Court GRANTS IN PART and DENIES IN PART the motion
3 to seal as follows:

4 1. Plaintiffs' motion to seal is DENIED as MOOT with respect to the sealing of
5 Plaintiffs' Motion for Class Certification and for Application of Washington Law;
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7 2. Plaintiff's motion to seal is GRANTED with respect to the sealing of the
8 unredacted version of the Declaration of Michael Sidman, Ph.D in Support of Plaintiffs' Motion
9 for Class Certification and for Application of Washington Law *and* Exhibits D, E, F, H, I, J, K,
10 M, N, O, P, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, and JJ thereto; and

11 3. Plaintiff's motion to seal is GRANTED with respect the sealing of Exhibits 5-12,
12 14, and 15 to the Declaration of Amy Williams-Derry in Support of Plaintiffs' Motion for Class
13 Certification and for the Application of Washington Law.
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15 DATED this 24th day of February, 2009.

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20 John C. Coughenour
UNITED STATES DISTRICT JUDGE
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